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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FRANCISCA MORALEZ,

Plaintiff,

vs.

POWER SUPPLY COLLECTIVE, INC. dba
MYPOWERSUPPLY.COM; AJAY GOEL
dba CROSSFIT ENDZONE; ANDREW
MALEK-ZADEH dba CROSSFIT
ENDZONE; JAMES L EDWARDS, Trustee
of the JAMES L EDWARDS TRUST;
HARVEY ROSENTHAL, Trustee of THE
ROSENTHAL REVOCABLE TRUST under
Declaration of Trust dated August 10, 1999;
M. PHILLIP CARDOZA;

Defendants.

) No.

) **COMPLAINT ASSERTING DENIAL OF**
) **RIGHT OF ACCESS UNDER THE**
) **AMERICANS WITH DISABILITIES ACT**
) **FOR INJUNCTIVE RELIEF, DAMAGES,**
) **ATTORNEYS' FEES AND COSTS (ADA)**

I. SUMMARY

1. This is a civil rights action by plaintiff FRANCISCA MORALEZ ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

CrossFit Endzone
1070 Shary Circle
Concord, CA 94518
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against POWER SUPPLY COLLECTIVE, INC. dba MYPOWERSUPPLY.COM; AJAY GOEL dba CROSSFIT ENDZONE; ANDREW MALEK-ZADEH dba CROSSFIT ENDZONE; JAMES L EDWARDS, Trustee of the JAMES L EDWARDS TRUST; HARVEY ROSENTHAL, Trustee of THE ROSENTHAL REVOCABLE TRUST under Declaration of Trust dated August 10, 1999; and M. PHILLIP CARDOZA (hereinafter collectively referred to as “Defendants”), pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Northern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Defendants own, operate, and/or lease the Facility, and consist of a person (or persons), firm, and/or corporation.

8. Plaintiff suffers from rheumatoid arthritis and is substantially limited in her ability to walk, requiring her to use a wheelchair for mobility. Consequently, Plaintiff is “physically disabled,” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

9. The Facility is open to the public, intended for non-residential use, and its operation affects commerce. The Facility is therefore a public accommodation as defined by

1 applicable state and federal laws.

2 10. Plaintiff lives approximately 20 miles from the Facility and visited the Facility
3 on or about December 29, 2016 for the purpose of picking up meals she had ordered from
4 MyPowerSupply.com, a service which offers premade meals that can be delivered to local
5 gyms for pickup by customers. Plaintiff selected the Facility as her pickup site, as it is close to
6 her home and convenient, as it is near the Costco she goes to shop and get gas for her vehicle.
7 During her visits to the Facility to pick up her meals, Plaintiff encountered the following
8 barriers (both physical and intangible) that interfered with, if not outright denied, Plaintiff's
9 ability to use and enjoy the goods, services, privileges and accommodations offered at the
10 Facility:

- 11 a) Plaintiff could not find any accessible parking at the Facility. She had to
12 park in a standard parking stall and leave her wheelchair ramp deployed
13 with her van door open while she went inside to pick up her meals, so
14 that no one would park next to her and obstruct the area she needed to
15 have clear in order to deploy the ramp.
- 16 b) The pavement in the area where Plaintiff parked was uneven, containing
17 cracks and excessive slopes, which made it hard for her to use the ramp
18 to unload from her vehicle.
- 19 c) The Facility entrance had a high threshold which was difficult for
20 Plaintiff to maneuver over.
- 21 d) There were mats on the floor inside the Facility, which were hard for
22 Plaintiff to wheel over. In particular, the mat near the entrance door was
23 within the required maneuvering clearances at the door and made it very
24 difficult for Plaintiff to open the door to exit because her wheelchair got
25 stuck between the door and the mat.
- 26 e) The MyPowerSupply.com meals were stored in the refrigerator on a
27 high shelf, which made it hard for Plaintiff to reach them.
- 28 f) The restroom had a round door knob, which was difficult for Plaintiff to

grasp and turn.

g) The coat hook in the restroom was too high for Plaintiff to reach.

h) The paper towel dispenser in the restroom was too high, making it hard for Plaintiff to reach.

i) The grab bars in the restroom were positioned too high, and the rear grab bar was obstructed by shelving, making it hard for Plaintiff to use the grab bars to transfer to the toilet.

11. The barriers identified in paragraph 10 herein are only those that Plaintiff personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist at the Facility and relate to her disabilities. Plaintiff will seek to amend this Complaint once such additional barriers are identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to her disabilities removed to afford her full and equal access.

12. Plaintiff was, and continues to be, deterred from visiting the Facility because Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities. Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility once the barriers are removed.

13. Defendants knew, or should have known, that these elements and areas of the Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Defendants have the financial resources to remove these barriers from the Facility (without much difficulty or expense), and make the Facility accessible to the physically disabled. To date, however, Defendants refuse to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

14. At all relevant times, Defendants have possessed and enjoyed sufficient control and authority to modify the Facility to remove impediments to wheelchair access and to comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for Accessible Design. Defendants have not removed such impediments and have not modified the Facility to conform to accessibility standards. Defendants have intentionally maintained the

1 Facility in its current condition and have intentionally refrained from altering the Facility so
2 that it complies with the accessibility standards.

3 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
4 so obvious as to establish Defendants' discriminatory intent. On information and belief,
5 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
6 to relevant building standards; disregard for the building plans and permits issued for the
7 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
8 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
9 property continues to exist in its non-compliant state. Plaintiff further alleges, on information
10 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
11 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

12 VI. FIRST CLAIM

13 Americans with Disabilities Act of 1990

14 Denial of "Full and Equal" Enjoyment and Use

15 16. Plaintiff re-pleads and incorporates by reference the allegations contained in
16 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17 17. Title III of the ADA holds as a "general rule" that no individual shall be
18 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
19 goods, services, facilities, privileges, and accommodations offered by any person who owns,
20 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

21 18. Defendants discriminated against Plaintiff by denying Plaintiff "full and equal
22 enjoyment" and use of the goods, services, facilities, privileges and accommodations of the
23 Facility during each visit and each incident of deterrence.

24 Failure to Remove Architectural Barriers in an Existing Facility

25 19. The ADA specifically prohibits failing to remove architectural barriers, which
26 are structural in nature, in existing facilities where such removal is readily achievable. 42
27 U.S.C. § 12182(b)(2)(A)(iv).

28 20. When an entity can demonstrate that removal of a barrier is not readily

1 achievable, a failure to make goods, services, facilities, or accommodations available through
 2 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
 3 § 12182(b)(2)(A)(v).

4 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
 5 barriers at the Facility without much difficulty or expense, and that Defendants violated the
 6 ADA by failing to remove those barriers, when it was readily achievable to do so.

7 22. In the alternative, if it was not “readily achievable” for Defendants to remove
 8 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
 9 services available through alternative methods, which are readily achievable.

10 Failure to Design and Construct an Accessible Facility

11 23. Plaintiff alleges on information and belief that the Facility was designed and
 12 constructed (or both) after January 26, 1993 – independently triggering access requirements
 13 under Title III of the ADA.

14 24. The ADA also prohibits designing and constructing facilities for first occupancy
 15 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
 16 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

17 25. Here, Defendants violated the ADA by designing and constructing (or both) the
 18 Facility in a manner that was not readily accessible to the physically disabled public –
 19 including Plaintiff – when it was structurally practical to do so.¹

20 Failure to Make an Altered Facility Accessible

21 26. Plaintiff alleges on information and belief that the Facility was modified after
 22 January 26, 1993, independently triggering access requirements under the ADA.

23 27. The ADA also requires that facilities altered in a manner that affects (or could
 24 affect) its usability must be made readily accessible to individuals with disabilities to the
 25 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s
 26 primary function also requires making the paths of travel, bathrooms, telephones, and drinking
 27 fountains serving that area accessible to the maximum extent feasible. *Id.*

28 ¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 28. Here, Defendants altered the Facility in a manner that violated the ADA and
2 was not readily accessible to the physically disabled public – including Plaintiff – to the
3 maximum extent feasible.

4 Failure to Modify Existing Policies and Procedures

5 29. The ADA also requires reasonable modifications in policies, practices, or
6 procedures, when necessary to afford such goods, services, facilities, or accommodations to
7 individuals with disabilities, unless the entity can demonstrate that making such modifications
8 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

9 30. Here, Defendants violated the ADA by failing to make reasonable modifications
10 in policies, practices, or procedures at the Facility, when these modifications were necessary to
11 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or
12 accommodations.

13 Failure to Maintain Accessible Features

14 31. Defendants additionally violated the ADA by failing to maintain in operable
15 working condition those features of the Facility that are required to be readily accessible to and
16 usable by persons with disabilities.

17 32. Such failure by Defendants to maintain the Facility in an accessible condition
18 was not an isolated or temporary interruption in service or access due to maintenance or
19 repairs.

20 33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney
21 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

22 **VII. SECOND CLAIM**

23 **Unruh Act**

24 34. Plaintiff re-pleads and incorporates by reference the allegations contained in
25 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

26 35. California Civil Code § 51 states, in part, that: All persons within the
27 jurisdiction of this state are entitled to the full and equal accommodations, advantages,
28 facilities, privileges, or services in all business establishments of every kind whatsoever.

1 46. Defendants' non-compliance with these requirements at the Facility aggrieved
2 (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly,
3 Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

4 **IX. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 6 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
7 2. Statutory minimum damages under section 52(a) of the California Civil Code
8 according to proof.
9 3. Attorneys' fees, litigation expenses, and costs of suit.²
10 4. Interest at the legal rate from the date of the filing of this action.
11 5. For such other and further relief as the Court deems proper.

12 Dated: February 7, 2017

MISSION LAW FIRM, A.P.C.

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14 /s/ Zachary M. Best
15 Zachary M. Best
16 Attorneys for Plaintiff
Francisca Moralez

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² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, FRANCISCA MORALEZ, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: February 7, 2017

/s/ Francisca Morales

Francisca Morales

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Zachary M. Best

Zachary M. Best, Attorney for
Plaintiff, Francisca Morales